

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 1164 OF 2008

Gangadhar s/o Maroti Ghule
age 56 years, occ. service
Mustering Assistant
R/o Nagdara Taluka ParliVaijnath
Dist. Beed.

Petitioner

Versus

1. The State of Maharashtra
through the Secretary,
Planning Department,
Mantralaya, Mumbai
2. The Collector,
District Beed.
3. The Executive Engineer,
Public Works Department,
Division Ambajogai
Dist. Beed.
4. The Deputy Engineer
Minor Irrigation, Sub Division
Ambajogai, Dist. Beed.
5. The Divisional Commissioner
Aurangabad Division, Aurangabad

Respondents

Mr. A.D. Sugdare, Advocate for the petitioner.
Mr. S.Y. Mahajan, AGP for respondents.

**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE: 23.09.2019

ORAL JUDGMENT : (Per Pradeep Nandrajog, CJ)

1] Heard learned counsel for the parties. Two Original Applications No. 563/1997 and 1387/2000 have been dismissed by the Maharashtra Administrative Tribunal, Bench at Aurangabad, by a singular order dated 19.12.2007 which has been challenged in the instant writ petition with a prayer that reliefs prayed for in both the Original Applications be granted to the petitioner. However, at the hearing today, learned counsel for the petitioner restricted submissions to the reliefs prayed for in Original Application No. 1387/2000.

2] Petitioner was employed in the Irrigation Department of the State of Maharashtra as a Mustering Assistant and the post is a Class III post.

3] Abolishing the post of Mustering Assistant, the State Government framed a scheme notified vide Government Resolution dated 01.12.1995, modified by Government Resolution dated 14.10.1998, as per which

Mustering Assistants in the Irrigation Department were to be absorbed against equivalent posts.

4] In pursuance of the scheme, the petitioner was directed vide order dated 26.06.1997 to report to the office of the Special Project, Sub-Division, Parali. This led the petitioner to file Original Application No. 563/1997 on the plea that the post of peon, albeit in the same scale of pay as that of Mustering Assistant, was not an equivalent post for the reason the post of Mustering Assistant was a Class III post and that of peon a Class IV post.

5] Realising that the positive relief sought for by him before the Tribunal may take time, the petitioner claims to have reported to the office concerned but was not permitted to join. On 08.08.1997, the concerned Officer informed the parent department that the petitioner was not permitted to join the duty. The reason emerges, as per the petitioner, from another letter dated 05.02.1998, being non-availability of a vacant post of peon in the office concerned.

6] The petitioner filed second original application praying in the alternative to the prayer made in the first original application that respondents before the Tribunal be directed to give him employment as a peon.

7] The impugned order dated 19.12.1997 does not note the facts with reference to the communications dated 08.08.1997 and 05.02.1998.

8] The impugned order only centers on the point whether equivalence of post has to be determined with reference to pay scale or additional qualification and the effect of posts, in the same scale of pay, placed in Group IV or Group III. The Tribunal concludes that in the absence of any further material before it concerning the pay scales, equivalence would be determined with reference to only the pay scales meaning thereby, two posts in the same scale of pay would be required to be held as equivalent posts. The Tribunal has dismissed both the Original Applications.

9] Regretfully, the facts which we have noted hereinabove concerning Original Application No. 1387/2000 have not been noted and much less

discussed by the tribunal.

10] Under the circumstances, maintaining the impugned order respecting the disposal of in Original Application No. 563/1997, we set aside the impugned order insofar as it has dismissed Original Application No. 1387/2000.

11] We restore Original Application No. 1387/2000 for adjudication afresh before the Maharashtra Administrative Tribunal with a direction to the Tribunal to decide the same within six months and while so doing, deal with the pleadings as also the documents filed along with the pleadings by the parties.

12] No costs.

(R.G. AVACHAT, J.)

CHIEF JUSTICE

dyb